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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,493	05/05/2006	Laurent Desire	67987.000002	7885

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EXAMINER

CHERNYSHEV, OLGA N

ART UNIT	PAPER NUMBER
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1649

MAIL DATE	DELIVERY MODE
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11/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Amendment

1. Claims 1-11 and 15-18 have been cancelled, claims 12-14 have been amended and claim 19 has been added as requested in the amendment filed on September 29, 2008.

Following the amendment, claims 12-14 and 19 are pending in the instant application.

Claims 12-14 and 19 are under examination in the instant office action.

2. Any objection or rejection of record, which is not expressly repeated in this action has been overcome by Applicant's response and withdrawn.

3. Applicant's arguments filed on September 29, 2008 have been fully considered but they are not deemed to be persuasive for the reasons set forth below.

Sequence compliance

4. This application remains non-compliant with the Sequence rules of 37 C.F.R. § 1.821 (a)(1) and (a)(2) as explained in section 2 of paper mailed on March 28, 2008. Specifically, Applicant has filed a CRF on September 29, 2008, which was not entered into the database as being technically flawed. Applicant is advised to contact the Patent Electronic Business Center at 866-217-9197 (toll free) for clarification and help.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 12-14, as amended, and new claim 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,420,534, Gurney et al, ('534 patent) essentially for reasons of record in section 17 of Paper mailed on March 28, 2008.

7. Claims 12-14 and 19 as presented are directed to antibodies that selectively bind to a polypeptide comprising at least SEQ ID NO: 3, or a derivative of said antibody having substantially the same antigen specificity.

MPEP § 2111 Claim Interpretation; Broadest Reasonable Interpretation, states, During patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” (The Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the “broadest reasonable interpretation” standard: The Patent and Trademark Office (“PTO”) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004)). See also, *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

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Further, MPEP § 2111.01 Plain Meaning, states

“[Although] claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004).

Thus, by broadest reasonable interpretation consistent with the instant specification, an antibody claimed in claims 12-13 is defined by any epitope outside of SEQ ID NO: 3 (because of the use of open type language “comprising”), or by the epitope of SEQ ID NO: 3, which has three common amino acids with the SEQ ID NO: 6 of the ‘534 Patent. Since the instant specification does not provide any limiting definitions of “substantially the same antigen specificity”, the ‘534 Patent broadly encompasses epitopes that meet the limitation “substantially the same antigen specificity”, and the prior art’s antibodies appear to be encompassed by the broadest reasonable definition of the epitope that supports their selectivity.

Similarly, claims 14 and 19 are directed to antibodies that are defined by the epitopes within and beyond the amino acid sequence of SEQ ID NO: 2. Because the genus of antibodies recited in claims 12 and 13 is not limited to epitope specificity of SEQ ID NO: 3 due to the use of “comprising” language, antibodies that bind epitopes common to SEQ ID NO:2 of the instant application and SEQ ID NO: 6 of the ‘534 patent fully meet the limitations of the instant claims 14 and 19.

Conclusion

8. No claim is allowed.

19. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga N. Chernyshev whose telephone number is (571) 272-0870. The examiner can normally be reached on 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey J. Stucker can be reached on (571) 272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Olga N. Chernyshev/

Primary Examiner, Art Unit 1649